

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

D+F

-----X

UNITED STATES OF AMERICA,

O R D E R

03 CR 148 (ARR)

- against -

NIGEL McKENZIE,

Defendant.

-----X

ROSS, United States District Judge:

This court has issued a number of orders soliciting the parties' views regarding any further proceeding in this case in light of the mandate of the Court of Appeals for the Second Circuit remanding this case for further proceedings consistent with United States v. Crosby, 397 F.3d 103 (2d Cir. 2005). In response, defendant has submitted a memorandum contending that he is entitled to a full resentencing proceeding and that due process of law precludes his resentence to a prison term exceeding a total offense level of 20 (presumably, meaning a sentencing range of 33 of 41 months imprisonment). Defendant has not, however, submitted any information or argument regarding why, if resented consistent with the mandates of United States v. Booker, 125 S. Ct. 738 (2005), his sentence should be "non-trivially different" from that imposed upon him on September 4, 2004.

Should defendant choose to address this issue, his submission must be served and filed, with courtesy copies to chambers, by November 3, 2005. The government's response, if any, must be served and filed by November 9, 2005.

SO ORDERED:

Dated: Brooklyn, New York  
October 26, 2005

---

Allyne Ross  
United States District Judge

COPIES FORWARDED TO:

John G. Martin  
Assistant U.S. Attorney  
Eastern District of New York  
U.S. Attorney's Office  
610 Federal Plaza  
Central Islip, NY 11722-4454

Defendant

Mark Pollard, Esq.  
Pollard & Koenig  
305 Broadway, 9<sup>th</sup> Floor  
New York, NY 10007